IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 529 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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DEVABHAI NARANBHAI HARIJAN - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :

MR DEEPAK M SHAH for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE MD SHAH

Date : 29/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal has been filed by the appellant original accused against the judgment and

order of conviction dated 8-5-1997 passed by the learned Addl. Sessions Judge, Junagadh, in Sessions Case No.53 of 1995 sentencing the appellant to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- and in default of payment of fine to suffer simple imprisonment for three months for the offence under Sec.302 of IPC. The appellant was also sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.1,000/- and in default of payment of fine to suffer simple imprisonment for three months for the offence under Sec.307 of IPC. Both the sentences were ordered to run concurrently.

2. The facts of the case in short are that on 14-1-1994 when P.S.O., Mendarda Police Station was in charge, one Jivabhai Somabhai of Datrana came and lodged a complaint against the present appellant which was noted down by him and registered as

C.R.No.I-66 of 1994 of Mendarda Police Station for the offence punishable under Secs.307 and 302 of IPC and also Sec.135 of B.P.C. against the present appellant. It was alleged in the complaint that the appellant assaulted with knife his wife and two sons namely, Kalu and Jagdish and also inflicted injury on his body by himself. During the treatment, his wife and son Kalu succumbed to the injuries while Jagdish and accused were saved. The reason for the incident as mentioned in the complaint was that the appellant was suspecting the character of his wife that she was having illicit relation with his friend Chino. After registering the offence, the Police started investigation and recorded statements of injured Jagish and other witnesses including the neighbours and the independent persons. He also informed the Executive Magistrate by sending a note for

recording the dying declaration of both the injured persons and on completion of the same, it has been filed. He has prepared the inquest panchnama and has also made arrangements for sending the body of the wife and son Kalu for post mortem. He also prepared the inquest panchnama, panchnama of scene of offence and other panchnamas. He seized the muddamals and it was sent to FSL for analysis with covering letter and on receiving the report, it was kept in file. At the end of investigation, charge sheet was filed under Secs.302 and 307 of IPC and Sec.135 of B.P.C. against the appellant-accused.

3. As the case of the present appellant was triable by the Court of Sessions, learned Magistrate committed the case into the Court of Sessions where it was numbered as Sessions Case No.53 of 1995 and sent into the Court of learned Addl. Sessions Judge,

Junagadh for trial.

4. As the accused pleaded not guilty to the charge, charge to that effect was framed against the accused. To prove the charge against the appellant, the prosecution examined various witnesses and also placed reliance on documentary evidence. On production of closing purshis by the prosecution, learned Addl. Sessions Judge, Junagadh recorded further statement of the accused under Sec.313 of Cr.P.C. mainly on the point of incriminating evidence received during the course of investigation. Thereafter, after giving opportunity to the parties concerned, learned Addl. Sessions Judge, Junagadh, convicted the accused as aforesaid.

5. Being aggrieved and dissatisfied with the said judgment and order of conviction passed by the learned Addl. Sessions Judge, Junagadh, on 8-5-1997, the present appeal

has been preferred by the appellant-original accused.

6. The appeal was listed in our Court in the month of November, 2005 and when it has come up for hearing on its seniority, we have heard the learned counsel for the respective parties. On behalf of the appellant, we have heard Mr.D.M.Shah, and learned APP, Mr.R.C.Kodekar, on behalf of the respondent-State at length.

7. Mr.D.M.Shah has concentrated his arguments on the evidence of the only eye witness i.e. the injured Jagdish, who is the son of the appellant accused aged about 10 years at the relevant time. Taking us through the oral evidence of Jagdish, it is argued that he has not supported the say of the prosecution in toto and except his evidence, there are no other evidence to connect the accused with the crime. It is a case wherein the prosecution is not able to prove the case

against the appellant accused and, therefore, it is requested that the appellant may be acquitted. He has taken me through the evidence of Executive Magistrate and the doctor who has noted down the dying declaration, dying declaration and case papers and argued that once Jagdish survived, statements given by him in the form of dying declaration cannot be treated as the real dying declaration. Simultaneously, the statement of the accused recorded by the Executive Magistrate cannot also be taken into consideration. It is submitted that in absence of other evidence, accused is required to be acquitted.

8. Learned APP, Mr.R.C.Kodekar, has drawn our attention towards the extra judicial confession given by the accused first before the doctor of Mendarda Hospital. He has also taken us through the evidence of doctor and case papers and argued that at the time of

giving the oral dying declaration before the doctor at Mendarda, he has categorically admitted that he had a suspicion regarding the character of his wife as she was having illicit relation with his friend Chino and, therefore, he could not control himself and just to teach her a lesson, he assaulted her and their two minor children aged about 14 and 10 years respectively and same has been noted down by the doctor in the history sheet. Not only that, he caused self-inflicted injuries on his body which is simple is nature. He has given the same history when he reached Junagadh and same was noted down by the doctor and deposed into the Court. According to him, minor son Jagdish ultimately turned hostile and did not support the say of the prosecution. However, he has made a statement before the doctor regarding the incident wherein also, he has narrated the fact that it is his

father who assaulted him, his mother, younger brother and also caused injuries on himself. Mr.Kodekar has vehemently argued that all the statements were recorded or made by the accused before the doctors and it was established that the injured appellant and injured Jagdish were taken to Mendarda hospital and there is no denial. When there is a statement on record before the doctor admitting the guilt, it is an extra judicial confession of the accused before the Medical Officer. At that time he was not in police custody or under police surveillance and therefore, his statement can be considered as valuable piece of evidence when the doctor has deposed the same in toto into the court along with the statement of Jagdish made before the doctor. Once the said evidence is trustworthy, court should rely upon the same and convict the accused because it is a henious crime

committed by the appellant only on the ground of suspicion about the character of his wife of killing his wife and trying to kill two minor children one out of which succumbed to the injuries and just to make a show that somebody has entered into the house and tried to kill all the family members, he has caused self-inflicted injuries on his body. He has relied upon 1997 GLH page 799 in the case of John Rajan Christi Vs. State of Gujarat. In the said case, the accused has made a similar statement before the Officer of FSL in writing. The said dying declaration was accepted in toto and accused was convicted. In view of the above, it is submitted that the appeal be dismissed.

9. We have gone through the complaint, evidence of complainant, etc. It is required to be noted that the complainant did not support the prosecution case as being the real

brother of the appellant accused. Simultaneously, son of the appellant, injured Jagdish aged 10 years at the time of incident also did not support the prosecution case when he was put into witness box after ascertaining his ability to depose. It is established from the record that the main evidence is in the form of extra judicial confession made by the appellant accused before the doctor and other persons and that too also at the time when he was not declared as accused, arrested nor under police surveillance. The law on this point is very clear and therefore, it is an evidence which could be used against the appellant as it has been established in the evidence of above referred officers namely, doctors of Mendarda and Junagadh as well as Executive Magistrate. Not only that, at the earliest opportunity, son of the appellant, injured

Jagdish, had stated before the doctor narrating the incident in toto and the role played by the present appellant.

10. On going through the injury received by the appellant along with the evidence of doctor, we are of the view that injury is simple in nature and self-inflicted and it has been categorically deposed by the doctor before the Court also. However, nothing has come out in cross-examination so as to raise any slightest doubt in the evidence of doctor. We have considered the case from other angles also and we are of the opinion that the chain of circumstances has been completed as has been held by the court below in the judgment and it reaches to an only conclusion that the appellant, who had got suspicion in his mind about the character of his wife, entered into the house with knife, assaulted his wife, two minor children and thereafter, just to come

out from the above heinous crime committed by him, tried to cause self-inflicted injury on his body in order to make a show that somebody else entered into the house and killed his wife and son and also assaulted his son Jagdish and the appellant.

11. Keeping in mind the totality of the circumstances narrated hereinabove, we are of the opinion that there is evidence on record which connect the appellant with the crime mainly on the basis of extra judicial confession. When the said confession was made, the appellant was not in police custody or police surveillance. Hence, the said extra judicial confession appeared to be trustworthy. Therefore, we are of the opinion that the impugned judgment and order of conviction delivered by the court below are just and proper and do not call for any interference.

12. We are not discussing the evidence of

each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> "....This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

Under the above circumstances, appeal is required to be dismissed.

13. The appeal is dismissed.

(R.P.DHOLAKIA,J.)

(M.D.SHAH,J.)

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